IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

MARTY RAY ARDIZZONE,   )
)
        Petitioner,   )
vs.   )   Case No. CIV-12-0913-HE
)
JUSTIN JONES, Director,   )
)
        Respondent.   )

ORDER

Petitioner Marty Ray Ardizzone, a state prisoner appearing *pro se*, has filed a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, challenging two convictions for Murder in the First Degree following his guilty pleas in state court. Pursuant to a plea agreement, petitioner was sentenced to two terms of life imprisonment to be served consecutively. However, petitioner asserts that the prosecutor promised him he would only have to serve 25 to 30 years and seeks habeas relief in that regard. Presently before the court is respondent's motion to dismiss [Doc. #12], which characterizes the petition as an unauthorized second or successive habeas petition over which the court lacks jurisdiction. Consistent with 28 U.S.C. § 636(b)(1)(B), this matter was referred for initial proceedings to Magistrate Judge Gary M. Purcell. Judge Purcell has recommended that the motion be granted and that the Petition for Writ of Habeas corpus be dismissed for lack of jurisdiction. Objections to the magistrate judge's report and recommendation were due by November 28, 2012.

Petitioner, having failed to object to the report and recommendation, has waived his

right to review of the factual and legal issues it addressed. United States v. 2121 E. 30th St., 73 F.3d 1057, 1059 (10th Cir. 1996); *see also* 28 U.S.C. § 636(b)(1)(C) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations *to which objection is made*." (emphasis added)). Accordingly, the court **ADOPTS** Magistrate Judge Purcell's Report and Recommendation [Doc. #16] and **GRANTS** respondent's motion to dismiss [Doc. #12]. The Petition for Writ of Habeas Corpus is **DISMISSED**.

   IT IS SO ORDERED.

   Dated this 3rd day of December, 2012.

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JOE HEATON
UNITED STATES DISTRICT JUDGE

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